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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/555,523	09/15/2000	Veronique Roulier	6388-0518-0	9437
22850	7590 07/22/2003			
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER	
			WELLS, LAUREN Q	
			ART UNIT	PAPER NUMBER
		•	1617	
			DATE MAILED: 07/22/2003),

Please find below and/or attached an Office communication concerning this application or proceeding.

Application N. Application (Application N. Application (Application) (Ap								
## Examiner Lauren Q Wells 1617 ## The MAILING DATE of this communication appears in the cover sheet with the correspondence address = Part of for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estrations of time may be available under the positions of 37 CFR 1.35(b). In no event, however, may a reply be timely filled If the pelotic fronty specified abover, the nearonum standory pelotic will apply and will expense SIX (6) MONTHS from the mailing date of this communication of the period of the of the p		w.	Application N .	Applicant(s)				
Lauren Q Wells - The MAILING DATE of this communication appears in the cover sheet with the correspondence address Peri d for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. If the period for ringly specified across is less than thry (30) days, a reply within the situation printerium of theiry (30) days will be considered timely. If the period for ringly specified across is less than thry (30) days, a reply within the situation printerium of theiry (30) days will be considered timely. If the period for ringly is specified across is less than thry (30) days, a reply within the situation printerium of theiry (30) days will be considered timely. If the period for ringly is specified across is less than thry (30) days, a reply within the situation printerium of their (30) days will be considered timely. If the period for ringly is specified across is less than thry (30) days, a reply within the situation of their (30) days will be considered timely. Any right vectored by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any seamed patient amendation. Status Status Status Status Status This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disp sition of Claims 4) Claim(s) 1-10.12.13.15-32 and 34-46 is/are repected. Claim(s) 1-10.12.13.15-32 and 34-46 is/are rejected. The claims(s) 1-10.15-29, 34-46 is/are rejected. Claim(s) 1-10.15-29, 34-46 is/are rejected. Claim(s) 1-10.15-29, 34-46 is/are rejected. The proposed drawing correction filed on is is a proposed by the Examiner. Application Papers 9) The proposed drawing correction filed on is is a pr	Office Action Summary		09/555,523	ROULIER ET AL.				
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DETAILED ACTION

Claims 1-10, 12-13, 15-32, 34-46 are pending. Claims 12-13, 30-32 are withdrawn from consideration, as they are directed toward non-elected subject matter. The Amendment filed 6/17/03, Paper No. 19, amended claims 1 and 20.

Applicant's arguments are persuasive to over the 35 USC 112 rejection in the previous Office Action.

103 Rejection Maintained

The rejection of claims 1-10, 15-29, 34-46 under 35 U.S.C. 103(a) as being unpatentable over JP 09255529 (translation) in combination with US 5,326,484 is MAINTAINED for the reasons set forth in the Office Action mailed 3/17/03, Paper No. 18, and those found below.

Applicant argues, "The claimed invention requires the fatty substances in the oily phase to consist essentially of oils. For purposes of the claimed invention, oils differ from solid fatty substances such as waxes. JP '529 neither teaches nor suggests this limitation". This argument is not persuasive. The Examiner respectfully points out that for the purposes of searching for and applying prior art under 35 USC 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to comprising. If an applicant contends that additional steps or material in the prior art are excluded by the recitation of "consisting essentially of", applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. See MPEP 2111.03.

Applicant argues, "JP '529 teaches away from O/W emulsions in which the oily phase consists essentially of oils. Specifically, JP '529 states that the oily phase of its compositions

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must be solid. . . Moreover, JP '529's comparative example 2 demonstrates that compositions containing an oily phase lacking fatty substances are unacceptable and, thus, that substantial amounts of solid fatty substances must be present". This argument is not persuasive. First, the Examiner respectfully directs Applicant to the above paragraph, regarding the phrase "consisting essentially of". Second, the Examiner respectfully points out that JP '529 teaches oils in their oils phase. See Claim 6 of JP '529 which teaches higher alcohols and higher fatty acids as oil components and see page 21 of JP '529 which teaches that liquid fats and oils can bed blended into the emulsion. The Examiner respectfully points out that oils can be in both solid and liquid forms bases on their chemical make-up and the temperature at which they are contained. However, Applicant has not claimed the oils in a liquid state.

Applicant argues, "nothing in Nakashima would motivate one skilled in the art to modify JP '529, contrary to the teachings of JP '529, such that the fatty substances in the oily phase consist essentially of oils". This argument is not persuasive, as Nakashima is merely relied upon to teach monodispersions.

Applicant argues, "no motivation would exist to combine JP '529 and Nakashima with the expectation that a stable emulsion containing monodispersed globules would be obtained". This argument is not persuasive. Nakashima is specifically directed toward emulsions comprising little or no surfactants and JP '529 is an emulsion with substantially no surfactant, and Nakashima teaches that great stability is imparted to such emulsions when the oily globules of the oil phase are monodispersed. Thus, there is motivation to combine the two references.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw July 18, 2003

THEODORE J. CRIARES PRIMARY EXAMINER GROUP 1200

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